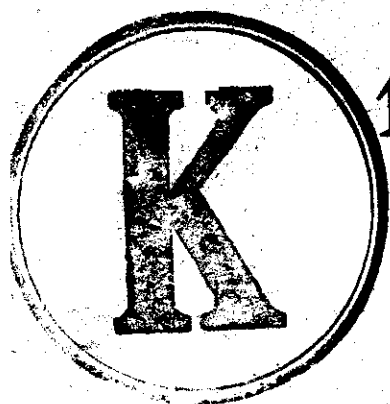




1952.

O/Charcoal/52

File No.

19/52

Legal Department

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Subject:— Opinions on the Bombay
Charcoal and Firewood Trade
Licensing Order

1952



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As already pointed out in R.L.A.'s opinions No.G-249,dated the 2nd April 1949 and No. G-654 dated the 24th December 1951, Government Order No. 455/IV-D,dated the 30th March 1946 which banned the export of charcoal and firewood from and place in the Prince of Bombay to any other place in India outside the Province cannot be deemed to have been made and continue in operation under the Bombay Essential Commodities and Cattle (Control) Act,1946. Nor can any fresh Order banning such export be made under the aforesaid Act except to the extent pointed out in paragraph 2 of R.L.A.'s opinion No. G-249 and 2nd April 1949.

Sd/ J. K. D.

Additional Secretary to Government.

BKN.26/7/

U R. to C.S.D.No.G-83,dated the 25th February 1952.

Office of the R.L.A.

The question raised for the R.L.A.'s consideration is where a licensee is given one licence under the Bombay Charcoal and Firewood Trade Licensing Order, 1949, for trading at two or more different places and the offence is committed at one place only, whether the licence is to be suspended for all the places or whether he can be allowed to trade at places other than ~~whichever~~ where the offence was committed.

It will all depend upon the nature of his conduct whether the licence in respect of whose business the misconduct is committed should be cancelled in respect of the place in regard to which the misconduct is committed or in respect of all the other places mentioned in the licence. If the misconduct is such as to prove him unworthy of carrying on the business, there should be no objection to cancelling his licence in respect of all the places. In other cases, there is no objection to cancel or suspend a licence in respect of one place only if the licence is in respect of more than one place.

Sd/P.M. Lad.

Remembrancer of Legal Affairs.

U.R. to C.S.¹⁾~~B~~.No.G-306, dated the 8th July 1952.

EKN.26/7/

Office of the R.L.A.

The following two questions are referred to this office for advice:-

(1) Whether on the available evidence successful prosecutions can be launched against charcoal dealers from Thana and Kolaba Districts for not covering their stocks of charcoal properly and thus contravening the Civil Supplies Department Order No. 32/3985/IV-D of May 1950, and, if not,

(ii) What absolute requirements must be fulfilled before such a prosecution can succeed so that the Civil Supplies Department can instruct the Forest Department Officers accordingly.

Question No. 1:- The Civil Supplies Department Order No. 32/3985/IV-D was issued under section 4 of the Bombay Essential Commodities and Cattle (Control) Act, 1946, somewhere in May 1950. At that time all orders under that section were required to be notified orders. The word "notified" from section 4 was deleted by Bom. Act XXVII of 1951 on the 20th October 1951 and after that orders of general nature are only required to be notified and orders affecting individuals need not be by notified order. In this case the orders served on the charcoal dealers were not notified in the Official Gazette and were therefore invalid ab initio. No prosecutions can therefore lie for breach of such orders. The procedure followed in this case of the Deputy Secretary, Civil Supplies Department signing all the blank orders and asking the Divisional Forest Officers to serve them on the dealers after filling in the gaps, is also highly objectionable.....

objectionable as held in paragraph 6 of R.L.A.'s opinion No.553 Confl, dated the 6th June 1951, as the orders can be attacked on the ground that before issuing them the Government of Bombay had not applied its mind to the orders. On this ground also the orders will be considered as invalid.

A further objection would be that in some cases the Divisional Forest Officers did not issue directions in writing regarding the manner in which stocks should be covered as provided in the order.

In view of all these defects it will not be feasible to file any prosecutions in these cases.

Question No. 2:- In future the Civil Supplies Department is advised to delegate powers under section 8 of the Bombay Essential Commodities and Cattle (Control) Act to the Divisional Forest Officers to make orders under section 4 in respect of properly covering the charcoal stocks and the order issued by the Divisional Forest Officer should also be a simple order directing that stock should be covered in such manner that it is damaged by rain (vide draft provided for Hay under R.L.A.'s No. 507-Confl. Dated 29-5-51). If this is done and if the case is entrusted to the police for investigation on report that any stock is not properly covered, there is no reason why prosecution should not succeed.

Sd/P.M. Lsd.

Remembrancer of Legal Affairs.

U.P. to C.S.D., No.G-174, dated the 26th April 1952.

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Office of the R.L. A.

The Director of Civil Supplies (Fuel) on whom a notice under section 46(5a) of the Indian Income Tax Act is served may inform the Income Tax Officer that the amounts are lying with him in deposit under clause 10 of the Bombay Charcoal and Firewood Trade Licensing Order, 1949 as he is the Licensing Authority and are liable to be forfeited for reasons to be recorded in writing. As the licences are current, the keeping of deposits with the Licensing Authority is a statutory necessity and the amounts of deposits cannot be said to be either due to the assessee or held on behalf of them. However if and when the amounts will become due to the assessee, the Director of Civil Supplies will pay the amount of Rs 2,025/- to the Income Tax Department.

As all the partners would be jointly and severally liable, the amounts may be deducted from the deposits pro rata if they become payable in respect of all the licences. Otherwise if deposits become returnable one after another then the full amount will have to be recovered from the 1st and if that is not sufficient from the 2nd so on till the sum of Rs.2,205/- is made up.

SA/ P.M. Lad.

Remembrancer of Legal Affairs.

EEN.26/7/

U.R. to C.S. D., No. G-358, dated the 2nd August 1952.